Supreme Court, U.S.
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No. 96-

IN THE
Supreme Court of the United States
OCTOBER TERM, 1996

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SUPREME COURT, U.S.

JANE ROE,
Petitioner,

v.

A. JOSEPH MASKELL, *et al.*,
Respondents.

Petition for Writ of Certiorari to the Court of Appeals of Maryland

PETITION FOR A WRIT OF CERTIORARI

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November 20, 1996

WILSON - EPES PRINTING CO., INC. - 789-0096 - WASHINGTON, D.C. 20001

65 pp

QUESTION PRESENTED

Does the Maryland Court of Appeals' refusal to recognize repressed memory of childhood sexual abuse as a circumstance tolling the state's statute of limitations, either on the basis of the "discovery rule" or as a mental disability, violate the Fourteenth Amendment's Due Process Clause?

PARTIES TO THE PROCEEDING

Petitioner, Jane Roe was appellant below, along with Jane Doe. The identities of Roe and Doe have been confidential throughout the proceedings.

Respondents, appellees below, were Father A. Joseph Maskell, Christian Richter, M.D., School Sisters of Notre Dame, Seton Keough High School, The Archdiocese of Baltimore and Archbishop William Keeler in his official capacity.

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PETITION FOR A WRIT OF CERTIORARI

Jane Roe respectfully petitions for a Writ of Certiorari to review the judgment of the Court of Appeals of Maryland.

OPINIONS BELOW

The opinion of the Court of Appeals of Maryland, Maryland's highest appellate court, is reported at 342 Md. 684, 679 A.2d 1087 (1996). The original unpublished order of the Circuit Court for Baltimore City (Caplan, J.) granting Respondents' Motion to Dismiss and/or Motion for Summary Judgment, thereby dismissing Petitioner's Complaint, consists solely of a docket entry. The unpublished oral opinion of the Circuit Court for Baltimore City (Caplan, J.), is reprinted at App. 16a-28a.

JURISDICTION

On July 29, 1996, the Court of Appeals of Maryland affirmed the judgment of the Circuit Court for Baltimore City, which dismissed Petitioner's Complaint as being barred by the statutes of limitation found at Maryland Courts and Judicial Proceedings Article, Sections 5-101 and 5-201. Petitioner Roe filed a timely Motion for Reconsideration (which is Maryland's version of petition for rehearing). The Motion for Reconsideration was denied on August 23, 1996. App. 29a. This Court has jurisdiction pursuant to 28 U.S.C. Section 1257(a).

PERTINENT STATUTORY AND CONSTITUTIONAL PROVISIONS

Maryland Annotated Code, Courts and Judicial Proceedings Article,

> Section 5-101. Three-year limitation in general.
>
> A civil action at law shall be filed within three years from the date it accrues unlesss another provi-

sion of the Code provides a different period of time within which an action shall be commenced.

Section 5-201. Persons under a disability.

(a) Extension of time.—When a cause of action subject to a limitation under Subtitle 1 of this title accrues in favor of a minor or mental incompentent, that person shall file his action within the lesser of three years or the applicable period of limitations after the date the disability is removed.

(b) Exception.—This section does not apply if the statute of limitations has more than three years to run when the disability is removed.

(c) Disabilities abolished.—Imprisonment, absence from the State, or marriage are not disabilities which extend the statute of limitations.

Constitution of the United States, Fourteenth Amendment:

Section 1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

STATEMENT OF THE CASE

Petitioner Jane Roe was a student at Seton Keough High School (hereinafter "Keough"), a parochial school in Baltimore City, from 1968 to 1972. During her tenure at Keough she was referred for counseling to the school chaplain, Father A. Joseph Maskell, Respondent. Respondents Maskell and Christian Richter, M.D. subjected

Petitioner Roe [1] to repeated sexual, physical and psychological abuse, including rape. Petitioner Roe was threatened with extreme punishment if she informed anyone of the abuse, which continued until her graduation in 1972.

Although she was able to recall some distressing incidents, such as being required to disrobe in Maskell's office, being caressed by him while naked and being slapped in the face, Petitioner Roe was unable to recall the more serious acts of abuse, namely the multiple rapes, as a result of a psychological process known as "repression". Repression theory accommodates at least two models: "serial repression" and "collective repression". The Court of Appeals observed that one pair of commentators explain:

> "In accordance with this robust repression concept, a person could, for example, banish awareness of the experience of having been brutally raped one or a hundred times during childhood. These distressing memories might be repressed serially, immediately following each event. Alternatively, all the memories might be collectively repressed at some time later, after the abuse stopped. If the memory of rapes were serially repressed, a child could go from rape to rape ignorant of the previous assault. If memories were collectively repressed, a child could have retained awareness of the rapes throughout the years they were happening and repressed them as a group at some later moment."

Richard Ofske and Ethan Watters, *Making Monsters*, 30 Soc'y 4, 5 (March/April 1993). Opinion, App. 2-3a.

PROCEEDINGS IN THE CIRCUIT COURT FOR BALTIMORE CITY

Petitioner Roe began to recover memories of this abuse in 1992. On August 24, 1994 she filed suit in the Circuit

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[1] Maskell also perpetrated sexual physical and psychological abuse on Jane Doe; the two plaintiffs' cases were eventually consolidated at trial and on appeal. See opinion at App. 4a.

Court for Baltimore City against Father A. Joseph Maskell, Christian Richter, MD., the School Sisters of Notre Dame, Seton Keough High School, the Archdiocese of Baltimore, and Archbishop William Keeler in his capacity as Archbishop of Baltimore, Respondents. Petitioner alleged battery, negligent supervision, negligent misrepresentation, intentional infliction of emotional distress and fraud.

Respondents moved for summary judgment based upon the time bar of the Maryland statutes of limitations. Petitioner and experts on behalf of both Petitioner and Respondents testified at a hearing on the motions. Affidavits, answers to interrogatories and deposition transcripts were also made a part of the record. At the conclusion of the hearing, Judge Hilary D. Caplan entered summary judgment for the Respondents. His opinion from the bench is found at App. 16a-31a. Petitioner Roe appealed to Maryland's intermediate appellate court, the Court of Special Appeals. Prior to consideration by that court, Petitioner sought a writ of certiorari from Maryland's Court of last resort, the Court of Appeals, which was issued.

REVIEW BY THE COURT OF APPEALS OF MARYLAND

On appeal, Petitioner Roe argued that the discovery exception should have been applied to toll limitations. While Petitioner did not reference the Fourteenth Amendment by name, her argument was couched in terms of due process, with such comments as "The Appellants should be allowed to have their day in court, albeit belatedly, ..." and "many courts have found comfort in balancing the desire to allow plaintiffs to have their belated day in court with the concern about prosecuting stale claims by authorizing or even requiring plaintiffs with such memories as herein exist to produce some corroborating evidence . . . .". Petitioner also contended that *Frye v. United*

States, 293 F. 1013 (D.C. Cir. 1923), concerning the admissibility of the results of scientific tests, should not be extended to medical opinion evidence. Finally, Petioner argued that repression was a "disability" which would also toll limitations. Respondent countered these arguments but raised no new issues.

The Maryland Court of Appeals considered whether the three year statute of limitations imposed by Courts and Judicial Proceedings Article, Section 5-101, is tolled by repressed memory under the discovery rule of *Poffenberger v. Risser*, 290 Md. 631, 431 A.2d 677 (1981). It also evaluated whether Section 5-201 of the same article, which tolls limitations for minors or those mentally incompetent until 3 years after the disability ends, was applicable. The Court of Appeals concluded that repressed memory was indistinguishable from the normal process of forgetting and that limitations were not tolled under either section.

With regard to Section 5-101, a cause of action generally accrues on the date of the wrong. *Hahn v. Claybrook*, 130 Md. 179, 100 A. 83 (1917). Maryland has developed an exception, known as the discovery rule, to avoid barring of claims that were not discovered until after limitations had run, where the plaintiff was unaware of the injury.

This discovery rule arose initially in the context of medical malpractice; *Hahn, supra.* However, it has been expanded over the years to include professional malpractice committed by accountants, architects, civil engineers and attorneys. *Leonhart v. Atkinson*, 265 Md. 219, 289 A.2d 1 (1972), *Steelworkers Holding v. Meneffee*, 255 Md. 440, 25 A.2d 177 (1969), *Mattingly v. Hopkins*, 254 Md. 88, 253 A.2d 904 (1969), *Mumford v. Staton, Whaley & Price*, 254 Md. 697, 255 A.2d 359 (1969).

In *Poffenberger*, the Court of Appeals made the discovery rule applicable to all civil cases. That Court stated that in order to

> 'activate the running of limitations [it must be proven that the plaintiff had] actual knowledge—that is express cognition, or awareness implied from "knowledge of circumstances which ought to have put a person of ordinary prudence on inquiry [thus, charging the individual] with the notice of all facts which such an investigation would in all probability have disclosed if it had been properly pursued" ' 290 Md. at 637, 431 A.2d at 681 (quoting *Fertitta v. Bay Shore Development Corp.*, 252 Md. 393, 402, 250 A.2d 69, 75 (1969).

The Court of Appeals reasonably concluded that the discovery rule, by necessity, needed to retain the flexibility to apply to different situations, and so its applicability is a legal determination for a court to make in each instance.[2]

The Court of Appeals considered the applicability of the discovery rule to a repressed memory case to be a legal determination, focusing on whether the theory of repressed memory is a valid scientific theory. The Court observed the conventional definition of repressed memory:

> ". . . the concept of repression has three elements: (1) repression is the selective forgetting of materials that cause the individual pain; (2) repression is not under voluntary control; and (3) repressed material is not lost but instead stored in the unconscious and can be returned to consciousness if the anxiety that is associated with the memory is removed. The assertion that repression is not under voluntary control differentiates repression from suppression and denial, with which it is sometimes confused. . ."

David S. Holmes, *The Evidence for Repression: An Examination of Sixty Years of Research*, in REPRESSION

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[2] This differs from the view in some other federal circuits and state courts that the date of discovery is a factual determination for the jury. *Hildebrand v. Hildebrand*, 736 F. Supp. 1512 (S.D. Ind. 1990).

AND DISASSOCIATION; IMPLICATIONS FOR PERSONALITY, THEORY, PSYCHOPATHOLOGY AND HEALTH, 85, 85-86 (J. Singer, ed. 1990).

The Court noted scientific studies which validate the diagnosis of repression as well as articles by adversaries who argue that there is no empirical, scientific evidence to support the claim that repression exists (App. 9a). Obviously, it is impossible to create a controlled study concerning repressed memory and childhood sexual abuse. The Court did not reject the theory of repressed memory on this basis.

Instead, it incorrectly concluded that the conflict concerning the theory within the scientific community brought the case within the ambit of *Frye v. United States*, 293 F.1013 (D.C. Cir. 1923) and *Reed v. State*, 283 Md. 374 (1978). *Reed* requires that when a court must consider admitting evidence based upon scientific techniques, the reliability of which cannot be judicially noticed, "it is necessary that the reliability be demonstrated before testimony based on the technique can be introduced into evidence." 283 Md. at 380. But Petitioner's testimony was never the result of a scientific technique.

The Court of Appeals also observed that the criticisms of repressed memory are that those memories which are refreshed with the assistance of a mental health professional are subject to manipulation and the biases of the professional and that repressed memories cannot be retrieved whole and intact. The Court correctly pointed out that the present case is not tainted by assisted memory.

As a result of its analysis, the Maryland Court of Appeals was unconvinced that there was a distinction between repression and normal forgetting. Unable to distinguish the two scientifically, the court chose to treat them the same legally and held that "the mental process of repression of memories of past sexual abuse does not activate the discovery rule." App. 11a.

The Court of Appeals also considered whether repressed memory constitutes a mental disability under Section 5-201. While the court acknowledged that both Michigan and New Jersey recognize repressed memory as an "insanity" under similar disability statutes, *Meiers-Post v. Schaefer*, 170 Mich. App. 174, 427 N.W. 2d 606 (1988), *Jones v. Jones*, 242 N.J. Super. 195, 576 A. 2d 316 (1990), cert. den. 122 N.J. 418, 585 A. 2d 412 (1990), it concluded on the basis of Maryland statutory history that the "disability" referred to in the statute was nothing less than insanity resulting in an inability to manage business affairs or to comprehend legal rights and liabilities under *Decker v. Fink*, 47 Md. App. 202, 422 A. 2d 389 (1980). This, it concluded, was not Petitioner's situation, since she had married, raised children and managed her own business affairs.

The Court of Appeals therefore declined to recognize repressed memory as a reason for tolling limitations.

REASONS FOR GRANTING THE PETITION

I. THE FOURTEENTH AMENDMENT'S DUE PROCESS CLAUSE IS VIOLATED BY THE MARYLAND COURT OF APPEALS' REFUSAL TO RECOGNIZE REPRESSED MEMORY OF CHILDHOOD SEXUAL ABUSE AS A CIRCUMSTANCE TOLLING THE STATE'S STATUTE OF LIMITATIONS, EITHER ON THE BASIS OF THE "DISCOVERY RULE" OR AS A MENTAL DISABILITY

This Court has, on many prior occasions, addressed the question of whether the application of a state statute of limitation has been applied so as to create a taking of a property right in violation of the Fourteenth Amendment. In *Logan v. Zimmerman Brush Co.*, 455 U.S. 422 (1982), it was observed that "the Due Process Clauses protect civil litigants who seek recourse in the courts, either as defendants hoping to protect their property or as plaintiffs attempting to redress grievances." Id. at 429. Under *Mul-*

lane v. Central Hanover Bank and Trust Co., 339 U.S. 306 (1950), this court has held that "a cause of action is a species of property protected by the Fourteenth Amendment's Due Process Clause." *Logan, supra,* at 428. Petitioner contends that, in her case, the Maryland Court of Appeals' failure to recognize repression as a reason for tolling the state's statute of limitations on the basis of the discovery rule exception unconstitutionally deprived her of her right to have her case heard on its merits.

Petitioner asserts that, as in *Logan*, the trial court's inability to act upon her case was through no fault of her own. In *Logan*, the appellant had filed a claim with the Illinois Fair Employment Practices Commission. Under the applicable regulatory statutes, the Commission was to have heard the claim within 120 days. The Commission set a hearing five days after the 120 day period, then upon motion of defense counsel, dismissed the claim. This Court agreed with the appellant that his constitutional right to due process had been violated as a result of an occurrence beyond his control, and indicated that the appellant was entitled to a hearing on the merits before the Commission.

Petitioner asserts that like *Logan*, she has been denied the right to assert her claim through no fault of her own. Because of repressed memory, Petitioner had no recollection of the rapes which occurred during her school years while she was a minor. Once these memories returned, she brought suit within three years of the recovered memory.

Petitioner also argues that her case is easily distinguishable from *Texaco, Inc. v. Short*, 454 U.S. 516 (1982). There the appellants were protesting that a 20 year statute of limitation had deprived them of their mineral rights under Indiana law. This Court observed that since the statute was a part of the state laws, appellants were presumed to have knowledge of it; the question then became whether they had a right to be advised that their 20 years

of non-use was about to occur. Neither the appellants nor this Court were able to cite any cases that required an individual to be given advance notice before such a rule of law might operate. Petitioner was aware of limitations; she was not aware of the facts giving rise to her cause of action.

The refusal of the Maryland court to accept repressed memory denies Petitioner her right to be heard in court on the merits through no fault of her own. Many federal and state courts have already recognized repressed memory as a reason to toll limitations, under either the discovery rule, or under a disability provision. The lack of uniformity among circuits merely encourages forum shopping and unfairly penalizes plaintiffs in jurisdictions following what appears to be the minority rule.

At present there is a split between the federal appellate circuits and between the federal district courts as to whether repressed memory is a valid exception to the various applicable state statutes of limitations. The split also occurs between federal and state courts within the same state. Finally, there is a split between the appellate courts of various states. The division concerns not only the scientific validity of the theory of repression, but also focuses on whether limitations is a factual issue for the determination of the trier of fact, based upon the credibility of the time of recovery of the memories, or whether repression is or is not a valid exception to limitations and is therefore a legal determination for the court. In addition, there are also various public policy issues favoring granting of the Writ.

The First Circuit approved the District Court for the District of Massachusetts' determination that repression is a valid theory and that memory arising therefrom can be credible. *Hoult v. Hoult*, 57 F. 3d 1 (1st Cir. 1995). In conflict with this ruling, however, the First Circuit, in reviewing the judgment of the United States District Court

of Maine, certified the question of whether repressed memory should be permitted to equitably toll the statute of limitations to the Supreme Judicial Court of Maine. The First Circuit then adopted and applied the opinion of the Maine state court and concluded that repressed memory is not a sufficient basis to toll limitations, essentially adopting the position that the repression theory is not valid. *Nuccio v. Nuccio*, 86 F. 3d 270 (1st Cir. 1996).

The Second Circuit considered the question of whether under New York law, a post traumatic stress disorder resulting from childhood sexual abuse rose to the level of an "insanity" which would toll limitations, and found that it did not. *Smith v. Smith*, 830 F. 2d 11 (2d Cir. 1987). In another New York case, the Second Circuit determined that repressed memory, or "memory suppression", was not sufficient to toll limitations. *Overall v. Estate of Klotz*, 52 F. 3d 398 (2nd Cir. 1995).

The Fourth Circuit has also had cause to examine the theory of repression and limitations in *Roe v. Doe*, 28 F. 3d 404 (4th Cir. 1994). Applying what it perceived to be South Carolina's courts' position, that court accepted the theory of repression as to abuse that occurred thirty five years before, but determined that the plaintiff had enough memory and evidence by May 4, 1989 to start the running of limitations, and that plaintiff's suit filed on May 5, 1992 was therefore untimely. Clearly, the Fourth Circuit acknowledged that repression was a valid reason for tolling limitations, but found that the plaintiff did not act quickly enough once those memories were recovered.

From the overview of the above cases, it is fair to say that the First, Second and Fourth Circuit opinions present a conflict as to whether repression is a valid reason to toll limitations. A similar division exists among the federal District Courts.

In earlier proceedings in *Holt, supra*, the federal District Court of Massachusetts ruled that repression of sex-

ual abuse memories was a valid reason to toll limitations under a discovery rule. *Hoult v. Hoult*, 792 F. Supp. 143 (D Mass. 1992). The same court, referencing *Hoult*, affirmed its position in *Shahzade v. Gregory*, 930 F. Supp. 673 (D. Mass. 1996). This federal court has consistently applied to the discovery rule to limitations in repressed memory cases.

In *Nicolette v. Carey*, 751 F. Supp. 695 (W.D. Mich. 1990), the federal District Court of Michigan, while primarily equating repressed memory with insanity, and employing that tolling device, observed that memories of abuse slowly emerged up until shortly before filing suit. This suggests that discovery would also be a valid reason for tolling limitations in this court.

The federal District Court for Illinois has also employed the discovery rule to toll limitations in repression cases. *Johnson v. Johnson*, 701 F. Supp. 1363 (N.D. Ill. 1988).[3] The federal District Court for Indiana, citing *Johnson*, adopted a modified version of the discovery rule. *Hildebrand v. Hildebrand*, 736 F. Supp. 1512 (S.D. Ind. 1990). Noting that the plaintiff had always retained some memory of the abuse, that court determined that a pure discovery rule was not applicable. However, the plaintiff did not know until therapy that her problems were caused by the abuse; 'Therefore, the plaintiff's cause of action must be governed by the "general rule" that a cause of action accrues when the harm suffered is ascertained or ascertainable.' 736 F. Supp. at 1521. In *Ernestes v. Warner*, 860 F. Supp. 1338 (SD Ind. 1994), the same court refused to apply repressed memory to avoid limitations.

And finally, in *Hewczek v. Sambor*, 803 F. Supp. 1063 (E.D. Pa. 1992) the federal District Court of Pennsyl-

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[3] The discovery rule in *Johnson* has since been superseded by specific statute requiring that cases based on sexual child abuse absolutely be brought before the victim's 30th birthday. *Boggs v. Adams*, 838 F. Supp. 1293 (N.D. Ill. 1993).

vania endorsed the discovery rule as tolling limitations in repressed memory cases. This represented a departure from that Pennsylvania Court's decision in *Bailey v. Lewis*, 763 F. Supp. 802 (E.D. Pa. 1991), where the same court declined to acknowledge repressed memory as tolling limitations under the discovery rule.

In addition to those courts mentioned above, at least one other federal district court has also held to the contrary. In *Prebble v. Hinson*, 825 F. Supp. 185 (S.D. Ohio 1993) the federal District Court of Ohio rejected repressed memory as either a reason for tolling limitations under the discovery rule, or as an insanity which would toll limitations.

This list is by no means exhaustive for the federal courts, but portrays the diversity of rulings which is also reflected in state court cases. Of the state courts nationwide which have considered the question of whether a statute of limitations is tolled under circumstances similar to Petitioner's, a significant number have held that the statute is tolled as a result of the discovery rule. These state courts include Iowa, Minnesota, Nevada, New Hampshire, North Dakota, Ohio, Texas, Utah, Wisconsin, California, Colorado, Montana and Washington, D.C. See *Claus v. Whyle*, 526 N.W. 2d 519 (Iowa 1994), *Blackowiak v. Kemp*, 528 N.W. 2d 247 (Minn. App. 1995), *Peterson v. Bruen*, 106 Nev. 271 (1990), *McCollum v. D'Arcy*, 138 N.H. 285 (1994), *Osland v. Osland*, 442 N.W. 2d 907 (N.D. 1980), *Ault v. Jasko*, 637 N.E.2d 870 (Ohio 1994), *Vesecky v. Vesecky*, 880 S.W. 2d 804 (Tex. App. Dallas 1994), *Olsen v. Hooley*, 865 P. 2d 1345 (Utah 1993), *Hammer v. Hammer*, 142 Wis. 2d 257, 418 N.W. 2d 23 (1987), *DeRose v. Carswell*, 242 Cal.Rptr. 633 (Cal. Ct. App. 1987), *Cassidy v. Smith*, 817 P.2d 555 (Colo Ct. Apps. 1991), *E.W. v. O.C.H.*, 231 Mont. 481 (1988), *Farris v. Compton*, 652 A.2d 49 (D.C. App. 1994).

Other state courts have considered the question, but did not rely specifically on the discovery rule, namely, Arizona, New York and North Carolina—See *Ulibarri v. Gerstenberger*, 178 Ariz. 1511 (1994), *Anonymous v. Anonymous*, 154 Misc. 2d 46,584 N.Y.S. 2d 713 (N.Y. 1992) and *Leonard v. England*, 445 S.E. 2d 50 (N.C. App. 1994).

A number of states have addressed the problem legislatively, with a codified version of the discovery rule with respect to childhood sexual abuse. These include Alaska, Connecticut, Illinois, Iowa, Maine, Minnesota, Missouri, Montana, Nevada, Oregon, South Dakota, Vermont, Virginia and Washington.[4]

This wealth of diversity within each level at the federal circuit level, federal district level and state court level indicates that the question of whether repressed memory is a valid basis upon which to invoke the discovery rule and toll limitations is an issue appropriate for resolution by this Court.

II. PUBLIC INTEREST REASONS FOR GRANTING THE PETITION

It appears that Petitioner's case is one of first impression before this Court; Petitioner believes this Court has not addressed the issue of repressed memory in the context of childhood sexual abuse cases previously. In addition, there are several other "public interest" factors favoring certiorari.

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[4] See Alaska Stat. 09. 10. 140(b) (1993 Supp.); Cal. Ann. Proc. Code 340.1 (West Supp. 1993); 736 Conn; ILCS S/18-202.2 (Illinois 1993); Iowa Code Ann. 614.8A (West 1992); Me. Rev. Stat. Ann. Title 14, 752-C (West Supp. 1992); Minnesota Stat. Ann. 541.073 (West Supp. 1993), Mo. Ann. Stat. 537.046 (Vernon Supp. 1993); Mont. Code Ann. 27-2-216 (1993), Nev. Rev. Stat. Ann. 11.215 (Michie Supp. 1991); Or. Rev. Stat. 12.117 (1991); S.D. Codified Laws Ann. 26-10-25 (1992); Vt. Stat. Ann. title 12,522 (Supp. 1993); Va. Code Ann. 8.01-249(b) (Michie 1992); Wash. Rev. Code Ann. 4.16.340 (West Supp. 1993).

Certainly repressed memory is a timely issue. On November 11, 1996, the American Psychological Association released an expert panel's interim report concerning repressed memory of childhood sexual abuse; the final report is to be presented to the APA Council of Representatives in February, 1997. Among the points of consensus reached by the panel were, that while most people who were sexually abused as children remembered all or part of what happened to them, "it is possible for memories of abuse that have been forgotten for a long time to be remembered." APA NEWS 11/11/94. This would appear to validate at last the theory of repression. Petitioner has included the APA's Diagnostic and Statistical Manuals III and IV to assist this court in understanding repressed memory. App. 30a.

At least one professional society, the Maryland Psychiatric Society, has expressed an interest in participating in this case as an amicus curiae. However, their participation, for financial reasons, is dependent upon the participation of at least one other public interest group.

Accordingly, this Court should grant certiorari to clarify the validity of repression and its impact upon statutes of limitation under the discovery rule.

CONCLUSION

For the aforegoing reasons, the petition for a writ of certiorari should be granted.

Respectfully submitted,

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November 20, 1996

APPENDIX

APPENDIX

APPENDIX

IN THE COURT OF APPEALS OF MARYLAND

No. 102

September Term, 1995

JANE DOE, *et al.*

v.

A. JOSEPH MASKELL, *et al.*

Murphy, C.J.
Eldridge
Rodowsky
Chasanow
Karwacki
Bell
Raker, JJ.

Opinion by Karwacki, J.

Filed: July 29, 1996

In this case we are asked to decide whether the "discovery rule" applicable to the time-bar of the statute of limitations on civil actions at law found in Maryland Code (1974, 1995 Repl. Vol.), § 5-101 of the Courts & Judicial Proceedings Article,[1] applies to cases of allegedly "repressed" and "recovered" meories. We hold that repression of memories is an insufficient trigger to compel the application of our discovery rule, and we

[1] Hereinafter, unless otherwise indicated, all statutory references are to Md. Code (1974, 1995 Repl. Vol.) of the Courts & Judicial Proceedings Article.

shall affirm the summary judgment entered in favor of the defendants.

I

Reviewing the record in a light most favorable to the plaintiffs, the facts of the case are as follows: Jane Doe, from 1967 to 1971, and Jane Roe, from 1968 to 1972, were students at Seton Keough High School [hereinafter "Keough"], a parochial school in Baltimore City. During their tenure at Keough, both girls, individually were referred for counseling to the school chaplain, Father A. Joseph Maskell. According to the complaints filed in the cases, Maskell subjected the girls to repeated sexual, physical, and psychological abuse including:

> "vaginal intercourse, anal intercourse, cunnilingus, fellatio, vaginal penetration with a vibrator, administration of enemas, . . . hypnosis, threats of physical violence, coerced prostitution and other lewd acts, physically striking Plaintiff, and forcing Plaintiff to perform sexual acts with a police officer."[2]

Both girls were allegedly threatened with extreme punishments if they informed anyone of the abuse, which continued until the girls graduated and left Keough in 1971 and 1972 respectively. At some point,[3] both plain-

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[2] This list contains the alleged acts of physical and sexual abuse common to both plaintiffs. As to Doe, she testified that the defendant placed a gun in her mouth. As to Roe, she testified that Defendant also administered douches and conducted pelvic examinations.

[3] It is unclear from the record the precise moment at which the plaintiffs ceased to recall the attacks. Repression theory accommodates at least two models: "serial repression" and "collective repression." As one pair of commentators explain:

> "In accordance with this robust repression concept, a person could, for example, banish awareness of the experience of having been brutally raped one or a hundred times during childhood. These distressing memories might be repressed serially, immediately following each event. Alternatively, all the memories might be collectively repressed at some time later, after the abuse stopped. If the memory of rapes were serially repressed, a child could go from rape to rape ignorant

tiffs claim that they ceased to recall the abuse suffered at the hands of Father Maskell, due to a process they term "repression."[4] Both plaintiffs began to "recover" memories of this abuse in 1992.

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of the previous assault. If memories were collectively repressed, a child could have retained awareness of the rapes throughout the years they were happening and repressed them as a group at some later moment."

Richard Ofshe & Ethan Watters, *Making Monsters*, 30 Soc'y 4, 5 (March/April 1993). Because we are evaluating the grant of summary judgment, all factual inferences must be resolved in the non-moving party's favor. Thus we must accept that the repression occurred in a serial fashion.

We note, however, that these plaintiffs have failed to offer substantial proof of when the repression, be it "serial" or "collective," occurred. If the repression occurred before the plaintiffs attained majority, the statute of limitations could not begin to run until the plaintiffs reached majority, and depending on our decision in this case, the discovery rule could potentially operate to toll the statute of limitations. Limitations would not begin to run until the repression ended and the resurfacing memories put the plaintiffs on sufficient notice.

Alternatively, however, if the repression happened in a "collective" fashion, after the plaintiffs achieved majority, and the plaintiffs were under no other disability, the statute of limitations immediately begins to run. Under traditional Maryland law, once the statute of limitations begins to run against a plaintiff, ordinarily no subsequent event will arrest it. *Hogan v. Stumper*, 257 Md. 520, 521, 263 A.2d 571, 572 (1970); *Maurice v. Worden*, 52 Md. 283 (1879); *Fink v. Zepp*, 76 Md. 182, 185, 24 A. 538, 539 (1892); *Dugan v. Gittings*, 3 Gill 138, 160-161 (1845) ("If subsequent disabilities were to be regarded, the right of action might be saved for centuries; and the statute would be rendered incapabl of accomplishing the important purposes for which it was passed."). Therefore, if Doe or Roe had not yet repressed the memories of the sexual assault by the defendants by even the day after their attaining majority, the statute of limitations barred these claims three years after their eighteenth birthdays, for Doe after August 11, 1974, and for Roe, after April 29, 1975.

[4] Jane Roe testified that she at all times retained memory of some of the abusive acts, including requiring her to disrobe in his office, caressing her while naked, forcing her to administer douches, and slapping her face. She claims, however, to have repressed her memories of more severe abuse, including multiple rapes.

Plaintiffs filed suit against Father A. Joseph Maskell, Christian Richter M.D.,[5] the School Sisters of Notre Dame, Seton Keough High School, the Archdiocese of Baltimore, and Archbishop William Keeler in his capacity as Archbishop of Baltimore. The suits, filed in the Circuit Court for Baltimore City on August 24, 1994 allege battery, negligent supervision, negligent misrepresentation, intentional infliction of emotional distress, fraud, and loss of consortium.[6] The cases were consolidated for trial and assigned to the Honorable Hilary D. Caplan for trial. Prior to trial, the trial judge conducted a hearing to consider defendants' motions for summary judgment based on the time-bar of the statute of limitations.

At the hearing, both plaintiffs testified, as did expert witnesses offered by both plaintiffs and the defendants. Affidavits, interrogatory answers and deposition transcripts were also part of the record. At the conclusion of the hearing, Judge Caplan entered summary judgment for the defendants. Doe and Roe appealed to the Court of Special Appeals. Before the case was considered by the intermediate appellate court, plaintiffs petitioned this Court for certiorari. The defendants agreed that the petition should be granted, and we issued our writ of certiorari to consider the important issues raised by this case.

II

The general Maryland statute of limitations and the one applicable in this case is Md. Code (1974, 1995 Repl. Vol.), § 5-101 of the Courts and Judicial Proceedings Article. That section provides:

> "A civil action at law shall be filed within three years from the date it accrues unless another provision of the Code provides a different period of time within which an action shall be commenced."

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[5] Dr. Richter is a defendant only in the suit brought by Jane Roe, not Jane Doe.

[6] The loss of consortium count applies only to the suit of Jane Doe, and her husband, John Doe, not to the Jane Roe suit.

Statutes of limitations, like the one contained in § 5-101, are intended simultaneously to "provide adequate time for diligent plaintiffs to file suit," *Pennwalt Corp. v. Nasios*, 314 Md. 433, 437, 550 A.2d 1155, 1158 (1988), to "grant repose to defendants when plaintiffs have tarried for an unreasonable period of time," *id.* at 437-38, 550 A.2d at 1158, and to "serve societal purposes," *id.* at 438, 550 A.2d at 1158, including judicial economy. There is no magic to a three-year limit. It simply represents the legislature's judgment about the reasonable time needed to institute suit. We have also observed that:

> "Statutes of limitation find their justification in necessity and convenience rather than in logic. They represent expedients rather than principles."

Pierce v. Johns-Manville Sales Corp., 296 Md. 656, 664-65, 464 A.2d 1020, 1025 (1983) (*quoting Chase Securities Corp. v. Donaldson*, 325 U.S. 304, 314, 65 S.Ct. 1137, 1142 (1945)).

Historically, our cases have held that a cause of action "accrued" on the date of the wrong. *Hahn v. Claybrook*, 130 Md. 179, 182, 100 A. 83 (1917). Under this "date of wrong" rule, claims that were not discovered until after the limitations period had expired were automatically barred. This traditional rule did not distinguish between a "blamelessly ignorant" plaintiff and one who had acted negligently and "slumbered on his rights." *Hecht v. Resolution Trust Corp.*, 333 Md. 324, 334, 635 A.2d 394, 399 (1994) (*citing Harig v. Johns-Manville Products*, 284 Md. 70, 83, 394 A.2d 299, 306 (1978).

To ameliorate this harsh result, this Court [7] developed the "discovery rule," which holds that a cause of action "accrues" when plaintiff knew or should have known that

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[7] It has been suggested that the Court of Appeals of Maryland was the first in the nation to adopt the discovery rule. Note, *The Statute of Limitations in Actions for Undiscovered Malpractice*, 12 WYO. L.J. 30, 34 (1957).

actionable harm has been done to him. This discovery rule initially arose in the context of medical malpractice, *see Hahn v. Claybrook*, 130 Md. 179, 100 A. 83 (1917), but soon expanded to encompass other forms of professional malpractice. *See, e.g., Leonhart v. Atkinson*, 265 Md. 219, 289 A.2d 1 (1972) (accountant); *Steelworkers Holding v. Menefee*, 255 Md. 440, 258 A.2d 177 (1969) (architect); *Mattingly v. Hopkins*, 254 Md. 88, 253 A.2d 904 (1969) (civil engineer); *Mumford v. Staton, Whaley & Price*, 254 Md. 697, 255 A.2d 359 (1969) (attorney).

These developments culminated in *Poffenberger v. Risser*, 290 Md. 631, 431 A.2d 677 (1981), where we made the discovery rule applicable in all civil suits. We held that in order to

> "activate the running of limitations [it must be proven that the plaintiff had] actual knowledge—that is express cognition, or awareness implied from 'knowledge of circumstances which ought to have put a person of ordinary prudence on inquiry [thus, charging the individual] with notice of all facts which such an investigation would in all probability have disclosed if it had been properly pursued.' "

Poffenberger, 290 Md. at 637, 431 A.2d at 681 (quoting *Fertitta v. Bay Shore Dev. Corp.*, 252 Md. 393, 402, 250 A.2d 69, 75 (1969)).

But the discovery rule, by necessity, must operate differently in different contexts. To retain the requisite flexibility to apply the rule to different situations, this Court has always retained to itself the power to shape the contours of the discovery rule. As we explained in *O'Hara v. Kovens*, 305 Md. 280, 503 A.2d 1313 (1986), "how the discovery rule operates in different types of cases is for the court to determine." *Id.* at 298, 503 A.2d at 1322. *See also Hecht v. Resolution Trust Corp.*, 333 Md. 324, 635 A.2d 394 (1994) (in a suit by corporation against its officers and directors alleging reckless banking practices, doctrine of adverse domination tolls the statute of limitations); *Trimper v. Porter-Hayden*, 305 Md. 31, 501

A.2d 446 (1985) (latent disease actions accrue at the earlier of discovery or death); *Pennwalt Corp. v. Nasios*, 314 Md. 433, 452, 550 A.2d 1155, 1165 (1988) ("discovery rule in a product liability action requires that statute of limitations should not begin to run until the plaintiff knows or . . . should know of injury, its probable cause and either manufacturer wrongdoing or product defect."). It is, therefore, for the trial court initially, and ultimately for this Court, to determine how the discovery rule will be applied to cases involving repressed memories. In so doing, we are mindful that "in determining the application of the statute [of limitations] to particular actions, we do so with awareness of the policy considerations unique to each situation." *Hecht*, 333 Md. 324, 338, 635 A.2d 394, 401 (1994). Therefore, the determination of the applicability of the discovery rule in a memory loss or repression case is a legal determination for this Court to make.[8]

III

We find that the critical question to the determination of the applicability of the discovery rule to lost memory cases is whether there is a difference between forgetting and repression. It is crystal clear that in a suit in which a plaintiff "forgot" and later "remembered" the existence of a cause of action beyond the 3-year limitations period, that suit would be time-barred. Dismissal of such a case reflects our judgment that the potential plaintiff had "slumbered on his rights," should have known of his cause of action, and was blameworthy. To permit a forgetful plaintiff to maintain an action would vitiate the statute of limitations and deny repose for all defendants.

Plaintiffs in this case, however, claim that in order to avoid the pain associated with recalling the abuse they

[8] This legal review fortuitously coincides with our standard of review of the grant of summary judgment, "whether the trial court was legally correct." *Heat & Power v. Air Products*, 320 Md. 584, 591, 578 A.2d 1202, 1206 (1990).

suffered, their memories were "repressed," not merely "forgotten," and later "recovered," rather than "remembered." They argue that this difference renders them "blamelessly ignorant" and excuses their failure to file suit in a timely manner. To aid in an understanding of plaintiffs' argument, we have extracted two implicit assumptions:

1. That there is a qualitative and quantitative difference between "repression" and mere "forgetting;" and
2. that this difference is of a sufficient quality to compel us to find that plaintiff is excused by operation of the discovery rule and had no reason to have know about the existence of her cause of action.

We have reviewed the expert testimony provided at the summary judgment hearing, and reviewed numerous scientific journals submitted by the parties. We begin by attempting to understand what repression is. Even defining the term is not easy; it originated with Sigmund Freud who used the term differently and sometimes contradictorily throughout his career. David S. Holmes, *The Evidence for Repression: An Examination of Sixty Years of Research, in* REPRESSION AND DISASSOCIATION: IMPLICATIONS FOR PERSONALITY, THEORY, PSYCHOPATHOLOGY AND HEALTH 85, 85-86 (J. Singer, ed. 1990) [hereinafter *"The Evidence for Repression"*]. Holmes chooses to adopt a definition of repression based on the manner in which the term is conventionally used:

> "It is my belief that in its general use the concept of repression has three elements: (1) repression is the selective forgetting of materials that cause the individual pain; (2) repression is not under voluntary control; and (3) repressed material is not lost but instead stored in the unconscious and can be returned to consciousness if the anxiety that is as-

> sociated with the memory is removed. The assertion that repression is not under voluntary control differentiates repression from suppression and denial, with which it is sometimes confused . . . ."

The Evidence for Repression at 86.

The plaintiffs have provided us with several studies purporting to validate the diagnosis of repression. J. Briere & J. Conte, *Self-Reported Amnesia for Abuse in Adults Molested as Children*, 6 J. TRAUMATIC STRESS 21 (1993); J. L. Herman & E. Schatzow, *Recovery and Verification of Memories of Childhood Sexual Trauma*, 4 PSYCHOANALYTIC PSYCHIATRY 7 (1987); Elizabeth F. Loftus, et. al., *Memories of Childhood Sexual Abuse, Remembering and Repressing*, 18 PSYCHOL. WOMEN Q. 67 (1994); Linda M. Williams, *Adult Memories of Child Sexual Abuse: Preliminary Findings from a Longitudinal Study*, 5 AM SOC'Y PREVENTION CHILD ABUSE ADVISOR 19 (1992).

The Defendants have also offered significant scientific information tending to discredit the concept of repression and its application in this setting. These arguments against repression take several forms.

First, the adversaries of repression stress that there is no empirical, scientific evidence to support the claims that repression exists. The studies purporting to validate repression theory are justly criticized as unscientific, unrepresentative, and biased. *See e.g.* Harrison G. Pope, Jr. & James I. Hudson, *Can memories of childhood sexual abuse be repressed?*, 25 PSYCHOL. MED. 121 (1995); *The Evidence for Repression* at 96-99. The reason for the failure of repression enthusiasts to obtain empirical evidence may be the nature of the process itself. As Dr. Jason Brandt of the Johns Hopkins University School of Medicine testified:

> "There are clear cases of people who claim that they don't remember things that happened in their

> past for whom no neurologic cause can be found. They don't have brain damage. They have nothing organically wrong that can account for [the claimed memory loss]. The question whether they remember or not, whether they truly have the mental state of a memory or not is impossible to determine."
>
> "We know what they are reporting, we don't know what they are experiencing. Furthermore, I believe that it is virtually impossible to distinguish psychogenic amnesia from faking, from malingering since the distinction between the two hinges on how conscious it is to the person and how willful it is, how intentional it is. And how conscious somebody is and how willful they're being are things that in spite of what we may say, we really don't have any way of assessing."

Just because there is so far no empirical validation for the theory of repression is not alone sufficient reason to discount the concept, yet it does cast some doubt.

Second, critics of repression theory point out that the scientific, and specifically, the psychological community has not embraced repression theory, and that, in fact, serious disagreement exists. While the existence of consensus (or lack thereof) in the scientific community is a more familiar inquiry within the context of determining the admissibility of scientific evidence under the test enunciated in *Reed v. State*, 283 Md. 374, 391 A.2d 364 (1978), it is also a useful measure for this Court to evaluate the acceptance, and acceptability of a scientific theory.[9]

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[9] Dr. John Henderson, a psychiatrist in private practice in Baltimore, gave succinct testimony on this point:

> "Q.: [a]re you familiar with any consensus opinion within the medical psychiatric profession or community that this—that adolescents can block the memory of multiple

Finally, critics of repression theory argue that the "refreshing" or "recovery" of "repressed" memories is more complicated than repression proponents would have us believe. This argument takes two forms: (1) that memories refreshed with the assistance of a mental health professional are subject to manipulations reflecting the biases of the treating professional; and (2) that a repressed memory cannot be retrieved whole and intact from the cold storage of repression. Despite the defendants attempts to characterize this case as one of assisted or enhanced memory recovery, this is simply not a situation in which the plaintiffs' memories have been manipulated by one or more mental health professionals acting in the guise of treatment. Nonetheless, in crafting a rule we must consider the apparently very real dangers of iatrogenic (therapist created) memories of sexual child abuse. *See* Julie M. Kosmond Murray, *Repression, Memory, and Suggestibility: A Call for Limitations on the Admissibility of Repressed Memory Testimony in Sexual Abuse Trials,* 66 U. COLO. L. REV. 477 (1995); Richard Ofshe & Ethan Watters, *Making Monsters,* 30 SOC'Y 4 (March/April 1993); Thomas M. Horner, et al., *The Biases of Child Sexual Abuse Experts: Believing is Seeing,* 21 BULL. AM. ACAD. PSYCHIATRY LAW 281 (1991).

After reviewing the arguments on both sides of the issue, we are unconvinced that repression exists as a phenomenon separate and apart from the normal process of forgetting. Because we find these two processes to be indistinguishable scientifically, it follows that they should be treated the same legally. Therefore we hold that the mental process of repression of memories of past sexual abuse does not activate the discovery rule. The plain-

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sexual abuse or physical abuse which has occurred over a period of time in the past . . .?

. . . .

A.: I can opine that there is no consensus within the medical community that such a phenomenon can occur."

tiffs' suits are thus barred by the statute of limitations. If the General Assembly should wish to rewrite the law, that is its prerogative and responsibility.[10]

As an alternative theory of their case, Plaintiffs refer us to § 5-201:

> § 5-201. Persons under a disability.
>
> *(a) Extension of time.*—When a cause of action . . . accrues in favor of a minor or mental incompetent, that person shall file his action within the lesser of three years or the applicable period of limitations after the date the disability is removed.

Similar to the discovery rule, § 5-201 attempts to differentiate between plaintiffs innocently unaware of their legal rights and those who have slumbered on their right to bring suit. In this respect, infants and persons with mental disabilities are considered innocent of their failure to file in a timely manner until three years after the disability has been removed. Plaintiffs in this case argue that their lack of memory of the trauma is proof until recently they were mentally incompetent so as to toll the statute of limitaitons.

Our sister jurisdictions of Michigan and New Jersey have held that repressed memory of sexual abuse can constitute "insanity" under similar disability statutes. *Meiers-Post v. Schaefer*, 170 Mich. App. 174, 427 N.W.2d 606 (1988); *Jones v. Jones*, 242 N.J. Super. 195, 576 A.2d 316 (1990), *cert. denied*, 122 N.J. 418, 585 A.2d 412 (1990). *See also*, Note, *Memory Repression: Should it Toll the Statutory Limitations Period in Child Sexual Abuse Cases?*, 39 WAYNE L. REV. 1589, 1603-05 (1993) [hereinafter *"Memory Repression"*]; Tina Snelling &

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[10] House Bill 326 (1994) would have removed cases of sexual child abuse from the statute of limitations applicable to other civil actions and create a longer period during which these claims can be brought. That bill died in the House Judiciary Committee.

Wayne Fisher, *Adult Survivors of Childhood Sexual Abuse: Should Texas Courts Apply the Discovery Rule?*, 33 S. TEX. L. REV. 377, 394-97 (1992).

Other states that have considered this issue, have rejected this view, holding that repression is not insanity or mental incompetence as envisioned by the disability statutes. *Memory Repression* at 1605 (*citing Smith v. Smith*, 830 F.2d 11 (2d Cir. 1987) (applying New York law); *Hildebrand v. Hildebrand*, 736 F.Supp. 1512 (S.D. Ind. 1990) (applying Indiana law); and *Lovelace v. Keohane*, 831 P.2d 624 (Okla. 1992)).

In this state, the few decisions that have explained the scope of § 5-201 have been uniform in limiting its scope to persons who are insane. *Rettaliata v. Sullivan*, 208 Md. 617, 622, 119 A.2d 420, 422 (1956); *Decker v. Fink*, 47 Md. App. 202, 207, 422 A.2d 389, 392 (1980).

Plaintiffs suggest, however, that the use of the terms "disability" and "mental incompetence" in the statute suggest a broader reach than the term "insanity." This assertion is belied by the history of the statute. Although the concept is much older,[11] the current language of this statute was written in 1973 and adopted as part of the Code revision process and the creation of the Courts and Judicial Proceedings Article. Chapter 2, § 1 of the Acts of 1973, 1st Sp. Sess. In the former statutory arrangement, disabilities tolling the statute of limitations for menal infirmity were contained in several sections. Md. Code (1957, 1971 Cum. Supp.), Art. 57, §§ 2, 3, 3A, and 6. Section 2 tolled the statute of limitations for those

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[11] *See Ruff's Adm'r v. Bull*, 7 Har. & J. 14 (1825); *Haslett's Adm'r v. Glenn*, 7 Har. & J. 17 (1825) ("the cause of action accrues . . . from the time there is a competent person to bring it."). Both of these cases suggest that the common law test to determine the tolling of the statute of limitations is the legal capacity to bring suit.

who were "*non compos.*" [12] Section 3 tolled the statute of limitations in specialties for those suffering from "insanity of the mind." Section 3A tolled the statute for the "insane." Section 6 tolled the statute of limitations for actions on sheriff's bonds for those who were "*non compos mentis.*"

It was to eliminate precisely these sorts of semantic quagmires that the State undertook to revise the Code. In September 1971, the Governor's Commission to Revise the Annotated Code published its first *Revisor's Manual,* detailing the procedure for code revision. Among those rules was the following dictate: "Do not use synonyms." *Id.* at 24. The favorable result of the code revision is clear: four provisions have been reduced to a single clear code section and four different phrasings of the same concept have been subsumed into one clear phrase: "mentally incompetent." There was no intent to broaden the reach of the tolling provisions. As the Revisor's Note to this section stated, "[i]t should be noted that the only disabilities under this section are infancy and insanity . . . ." Chapter 2, § 1 of the Acts of 1973, 1st Sp. Sess.

We conclude that the reach of § 5-201 is no broader than it was under the 1957 code provision or under the common law of Maryland. Only those plaintiffs who are insane and "unable to manage [their] business affairs or estate, or to comprehend [their] legal rights or liabilities" are able to take advantage of § 5-201. *Decker v. Fink,* 47 Md. App. 202, 207, 422 A.2d 389, 392 (1980).

The trial judge found that:

> "there is no question with the evidence that I have seen in this case that both Doe and Roe were very competent during the period of time, during the period of time, from the years of their alleged abuse until the present time. They managed their affairs.

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[12] An abbreviated form of "non compos mentis," Latin for "not sound of mind."

> One, raising four children in the process, and one continuing business and doing fairly well from a practical point of view, and managing their business affairs. So there is no issue of [insanity] in this case, from my finding of fact."

As there is no contrary evidence in the record, we shall affirm the summary judgment in favor of the defendants on the ground that plaintiffs' claims were barred by the statute of limitations three years after they reached their eighteenth birthdays, for Doe after August 11, 1974 and for Roe, after April 28, 1975.

JUDGMENT AFFIRMED, WITH COSTS.

IN THE CIRCUIT COURT
FOR BALTIMORE CITY

Case No. 94-236030/CL185155

JANE DOE, *et al.*

v.

A. JOSEPH MASKELL, *et al.*

Case No. 94-236031/CL185156

JANE ROE, *et al.*

v.

A. JOSEPH MASKELL, *et al.*

PROCEEDINGS HEARD ON MAY 5, 1995
BEFORE CAPLAN, J.

These are motions to dismiss, or motions in the alternative for summary judgments.

The parties basically have agreed for purposes of these complaints that the complaints would have been testified to as such within the interior of those complaints for purposes of this case. That gives us the starting point, that we accept that the allegations as stated are true for these purposes.

The issues presented in these hearings and the credibility of the plaintiffs Roe and Doe are not necessarily the gravamen of the motions, and what we are dealing with here is the technicalities of the law as well as interpretations of those technicalities.

The legislative intent is clearly stated in the Maryland Courts and Judicial Proceedings on the issue under 5-101 which I discussed briefly with Mr. Dantes concerning the statute of limitations.

These are things that courts do not like to go into generally, because when the legislature speaks, it speaks, and when it amends, it amends, and it has not chosen in this case to amend. And I think what we are stuck with here is the statute of limitations as it is written in the Courts and Judicial Proceedings under 5-201, persons under a disability.

Plaintiffs have a major hurdle in this case because the statute of limitations reflect legislative intent of what is adequate time for a person of ordinary diligence to bring an action. One of their purposes is to insure fairness to the defendants by encouraging promptness in bringing claims.

I do not intend by saying that, which is a recapitulation of what it said in the law, that this court in any way, shape or form favors defendants. That is a comment for the purposes of showing that the defendants are entitled to a prompt hearing in order to establish their case, just as the plaintiff might be.

Statutes of limitations are statutes of repose which Mr. Dantes has referred to allowing individuals the ability to plan for the future without the indefinite threat of potential liability. They serve society by promoting judicial economy, but their purpose also is to serve plaintiffs by providing adequate time for a diligent plaintiff to bring an action.

That case of Heck versus Resolution Trust in 1944 basically maintains the strict construction concerning the tolling of the statute of limitations, and accordingly the court may not permit any implied and equitable exception to be engrafted upon the statute of limitatons absent legislative creation of the exception.

No matter how serious and no matter how difficult this case is from an emotional point of view, it is not the function of this court to be a legislature and to engraft upon the statute of limitations those which I would equitably, if proven, may choose personally to do.

Courts and judicial proceedings under 5-101 discusses the civil action of law within three years from the date it accrues unless it is of a different period of time, which that then takes us into the discovery rule process.

Discovery rules provide that a cause of action accrues when a plaintiff knows or reasonably should know of a wrong and applies generally in all civil actions and we cite Heck again in that regard.

In order for the limitations to begin to run the plaintiffs must have expressed recollection and awareness implied from the knowledge of the circumstances which ought to have put a person of ordinary prudence on inquiry, thus charging the individual with notice of all facts with which such an investigation, would have in all probability would have disclosed had it been promptly pursued.

That is Hoffenberger, that we all know that kicks off the discovery process in Maryland, and that was in 1981.

Plaintiffs contend that the disability provision of the Maryland Courts and Judicial Proceedings should be deemed applicable to this litigation and try to fit their clients within that parameters of an extension of the discovery rule, and when a cause of action—under that of a disability.

And when a cause of action subject to limitation under the subtitle accrues in favor of a minor or mental incompent, that person shall file within three years or the applicable period after the disability has been removed.

Although the title under 5-201 uses the vague and broad term disability, the law itself refers only to minor and mental incompetents. Thus it seems that the legisla-

ture use of disability in both title 5-201 and later portions serves as a shorthand for minor and mental incompetents and subsumes no more.

In the Decker case, which I referred to and we have discussed, and counsel very adequately briefed, it is generally recognized that a person may be under the legal disability of insanity or unsoundness of mind within the meaning of the exception of the statute of limitations when the disability is of such nature as to show him unable to manage his business affairs or estate or to comprehend his legal rights or liabilities.

There is no question with the evidence that I have seen in this case that both Doe and Roe were very competent during the period of time, during the period of time from the years of their alleged abuse until the present time. They managed their affairs. One, raising four children in the process, and one continuing business and doing fairly well from a practical point of view, and managing their business affairs. So there is no issue of that in this case, from my findings of fact.

Plaintiffs argue that they were unable to protect their legal rights with respect to Maskell and Richter, and thereby were disabled.

First, it *is* noted the Decker court did not attempt to expand the disabilities in 5-201. The extracted in Decker merely without expansion of the meaning of the second disability classification, that is mental incompetency, and the reference to insanity and soundness of mind.

Mental incapacity or incompetency sets out the statute, but does not define PTSD.

Plaintiffs contend also that with regard to comprehension of legal rights that the court believes that may be misplaced. The issue is not plaintiffs' ability to comprehend, but plaintiffs' awareness of the events that give rise to legal rights.

It may be more strongly argued in the Doe case than it would be in the Roe case, because there was obvious acknowledgement and knowledge of some events which were both criminal in nature and may have brought forth a civil responsibility on the part of those that were the perpetrators, for purpose of this argument.

Unfortunately, the pertinent statutes and case law construing statutes do not speak to the distinction. Courts are unable to hear civil actions when such actions do not fall within the appropriate statute of limitations.

Now what I discussed with Mr. Dantes concerning the memories coming forth on a daily basis or on a yearly basis, I think it is very applicable in this case.

How can one, under the statute of limitations or any other argument be able to defend under the scenario of repressed memory, be able to defend in any adequate form or fashion against those allegations?

One can come forth 30, 40, 50, and theoretically 80 years subsequent and have a memory which goes back to childhood, when death, unavailability of witnesses and all the other problems that all trial counsel have to prepare their case seem evident, would be missing.

This case is an egregious case, taking the plaintiffs' case as they have alleged it. And it seems logical to worry about the defendant's rights in a case of this magnitude or in a case of these allegations. But that is the legislature as well as the case law, in the State of Maryland, that it needs to be protected for the purposes of proceeding in a normal ordinary fashion.

Now as to the discovery rule, it seems that both plaintiffs are in different positions in this case.

It is obvious to the court that Roe is in a position of having had knowledge and memories of certain abuse that existed for 20 some years; that she was able, could have been able to file suit during the period of her—after her

infancy, within a three year period of the statute of limitations.

It is argued by counsel that there were rapes that were additional causes of action, and each other certainly is true, that if a cause of action accrues each and every cause of action can come forth. But it seems illogical to this court that one would have some knowledge of sexual abuse, be it rape or otherwise, and not proceed to, if one chose to, proceed to not follow that until some 20 years down the pike.

The court believes that that under those circumstances would bar under the discovery rule applicable to the Roe case.

But Doe is somewhat different, because her memories came back I think in '92. There is some difference of opinion about whether they happened in April or whether they happened in June or July. And the doctor's recollections and memory of that differed from the plaintiff herself. Be that as it may, that is not necessarily definitive of anything. But it does and may apply to some of the rationale of some of the experts in this case.

It seems obvious to the court that in the Doe case as well that the discovery rule is applied as it is now, the law of the state would place a tremendous burden on the courts to, and as I asked Mr. Dantes, if every new memory creates a new case, and he thinks yes. And indeed theoretically it might indeed do so.

But it seems incumbent upon plaintiffs, in my mind at least, to come forth as soon as possible to prosecute those claims which were available or should have been known to be available at that particular time.

It need go without saying that courts are bogged down enough that everytime a memory comes forth, plaintiffs could come forth with a new memory, therefore, i.e., a new case. That seems illogical to this court. So I do not apply the discovery rule either to the Doe case.

The issue of quote repressed memory is the second issue that the court will attempt to discuss.

It goes without saying that the Reed and the Frye tests are at odds on both sides of the table in this case. The plaintiffs believe that the tests should be given no validity —not validity, but should not be applied, because the test that they believe should be applied is one of hard science test. I am not certain that is applicable in this case.

If we strictly construe those cases, the term methodology is used in the discussion, and methodology applies not only to hard science, but to all science. And it goes also without saying that science changes, and even in the Reed case, the last line of the Reed decision opens the door somewhat to this scenario, and it is amazing how Judge Smith in his dissent almost had this case in mind. But on page 399 of the Reed case, the court in that case subject to reconsideration by the court that if the use of spectrograms or other technical voice identification does in the future achieve the general acceptance of the science and legal community. That will open the door again.

So Reed discusses things, but Reed has kept its ears and eyes to the scientific community for the purposes of seeing what develops within the scientific community.

That gives a signal to this court that that would would look upon a Reed/Frye analysis in this case as being necessary. And the Reed case sets certain standards, and those standards need be met. And the standards that are set are that there be reliability, and there be a foundation for the reliability.

Now Daubert, if applied in this case would—I need to go through Daubert, because I think it says a lot about what we are talking about here, and the rules themselves and the comments by Lynn McClain who is one of the major authors of the five rules, 5-701, etc., refers to Daubert and future cases.

Although the Gypsum case did not come out in 1993, so did Daubert, and it's the Supreme Court speaking and the Supreme Court has discussed with great detail scientific evidence, evidentiary reliability must be based on scientific reliability. And even the condition for admission of scientific evidence or testimony under, in that case the federal rules, that evidence of testimony must assist the trier to understand evidence or to determine fact and issue goes primarily to relevance. In determining admissibility of scientific evidence or testimony, scientific validity, and that is the term they use, for one purpose is not necessarily scientific validity for other unrelated purposed.

The Daubert case and especially the Reed/Frye analysis, which this court is asked to apply from the plaintiffs' perspective—I mean from the defendants perspective, I think is applicable. And the court believes that the analysis as given by the plaintiffs' experts in this case have little if any validity. And the reason I say that is that they do indeed express an opinion, but the court believes there is a great distress, to say the least, upon the community of psychiatrists, worldwide as well as locally, and it can be locally seen with that of Dr. McHugh and others which he adequately discussed as having different views, that there is no consensus. As a matter of fact there is the opposite of consensus. There is a great deal of debate going on at this particular time in regard to the issue of quote repressed memory.

And the underpinnings of the plaintiff's case are shadowed, or trace the theory of those articles which this court finds to be, based on the evidence, not necessarily reliable or valid.

It was discussed at great length in testimony that certain evidence that was produced by Donner, Dr. Donner was not even the actual methodology, as well as the materials that were the underpinnings of the basic opinion was not read with careful scrutiny. Maybe he believed he understood that, but with not careful scrutiny.

The underpinnings of Dr. Blumberg's testimony were also based in part on some of the underlying scientific data which we have all referred to in Feldman, Williams, and all those items which counsel quite adequately cross-examined and examined witnesses about. But some of those items were not pure view items. There is no general acceptance within the community of those items, and they create a problem for this court in that I will allow their testimony in, but I say it is with the thinnest of admission that the court allows those to be a part of this record. I will not strike their testimony, but certainly the court believes that under Evans and other cases the reliability and the probative value is very diminished as with that which has opposed to it, and that is Dr. Brandt, Dr. McHugh, Dr. Henderson, and the like.

Now there is a great deal of reliance also by the plaintiffs on the Allewalt case, and I can't help but tell you I was disturbed when I read it when I came to the conclusion that I am now articulating.

But there is no distinction with a difference, I think.

Number one, the timeframe of this case places, I think, the plaintiffs in a very peculiar situation. If an act had taken place two, three, five years before, maybe rational minds could not differ. Excuse me. Could differ. But when something that has happened 20 years hence—and I am aware of the Washington, D.C., case—20 or 25 years prior to this and a label is attempted to be stuck on that, it strikes this court as being very difficult to swallow.

In the Allewalt case the rape was used as the stressor to establish that there is such a thing as post traumatic syndrome, or PTSD. However, in the case at hand, plaintiffs would have to take an extension of that.

And the plaintiffs' experts were not enough guidance for this court to show that it is probable that even if one has PTSD, that that automatically and scientifically, and

psychologically leads one to the amnesia. It is a leap of faith that this court cannot make.

So there is a major distinction.

Also that case happened within a four month period. This case is considerably longer.

And also that case states—and that was Judge Rodowsky, who in my mind is one of the finest judges in the court of appeals—it is a matter of trial court discretion based on the facts as presented. And I think that these facts of Allewalt differ tremendously with those of the case at hand.

Now the Collins case is a case that I think is a very important case in this matter, and I think it is something that the court needs to go into at some length. I am trying to find it, and I think I have it at hand.

In the Collins case a separated husband was indicted for shooting his estranged wife with a rifle at point blank range while she was sitting in an automobile with a friend Davis at a truck stop.

Shortly after the shooting Davis was unable to identify the assailant.

Additionally at the first trial which was held six months after the incident, Davis could not even recall being in the car at the same time of the shooting. But prior to the second trial, Davis was hypnotized in an effort to dredge up lost memory. At the second trial Davis gave a very detailed account of the events leading up to and including the shooting.

Though the published decision did not specifically address the clause of the witness's lack of recall, it would most probably be diagnosed as some form of repression based on post traumatic stress disorder.

The language in Collins I think is a great deal of assistance to this court.

The conclusions is that allegations of repressed and recovered memories the court believes in this case are stated in some language of that case. The old idea that our brain was like a computer and that everything that occurs to us is somehow imprinted into the brain and that was a theory of what happened with memory for a long time. What we have found out through scientific research is that that is not true at all.

We have put on these sensations that we had our own feelings, our own motivations, our own perceptions, and in that way memory is recalled, a reconstructive process or type of process where once we get the raw data it comes through our senses, our smell, our taste, our sight and so forth, things are then put upon it, and including our own perceptions, our own interpretations. And that is basically the theory of memory as it now exists, that we take in this raw data, and that this raw data is them [sic] changed based upon out [sic] interpretation of what is taking place within our environment.

And Collins as it applies here would take a 20 year experience of living, of new memories, of old memories, of new life, of children, of whatever, and attach all those images to history of memory.

I think it goes without saying, and it is a truism, that memory fades with time. Although certain events seem more likely to be remembered than others. And one of the witnesses testified to those what he believed to be truisms, I think without much dispute on the other side of the table. As a matter of fact, I think Mr. Dantes agreed that memories fade.

Those things being said, it is apparent to the court that it would be difficult, if not impossible, circumstance for any person using the test of memory to place any of the litigants in this case in the position of having to explain, defend or in any way, shape or form, try to change those recollections, other than some argument of false or pseudo memory analysis.

I don't think there is an argument in this case of false memory which was termed pseudo memory by one of the witnesses. I think that was Dr. Brandt. That is not the thrust of their case. But it is obvious to the court that these memories, having had the test of time of 20 years and 25 years, the reliability of that based on the testimony of McHugh, Dr. McHugh, Drs. Henderson and so forth, Dr. Brandt, they all said basically the same thing, and that is that there is no way to test the validity of those memories, the validity of those memories. And you just can't crawl into the minds of another person.

And on the one hand for Mr. Dantes and your side of the table your point is well you can't do that, you don't have to do that in the case, there are other ways of doing that. There are other ways of testing that material. But the court is of the opinion that the passage of time here in and of itself creates a major disability for both the plaintiffs and the defendants, and that the scientific evidence that was presented in this case strongly suggests that there are no empirical studies that verify the existence of repressed memory.

That being the case, the court is going to grant the motions to dismiss.

Welcome an appeal, and the chips of course will fall where they may.

Again, the court is adopting basically I have said what I have said on the record, which everyone has heard, but the court is going to adopt the theories as explicitly discussed in the defendants' briefs, and adopt these theories more particularly with statute of limitations; and adopt those as a portion of this opinion, believing that those are the appropriate remedies under the circumstances.

The last thing I say is that the court in no way, shape or form, wishes the plaintiffs to feel that this court is judging their credibility. It is their recollection of memory that the court has problems with. And it does not in any

way, shape or form mean to express to any of those persons or any other persons who might have had these experiences that those things did not happen, and that if this case goes to trial that it could not be proved to the satisfaction of the jury, but that this court believes that the test of the statute of limitations has not been met, and the test of the discovery rule has not been met legally, and the test of Reed/Frye has not been met, and the test of scientific reliability has not been met. Those are legal discussions which I make. They are not scientific discussions which have any empirical data behind them.

So the court thanks counsel again for their cooperation in this matter, and please send me copies of your briefs.

(Whereupon, the proceedings were adjourned.)

IN THE COURT OF APPEALS
OF MARYLAND

No. 102
September Term, 1995

JANE DOE *et al.*

v.

A. JOSEPH MASKELL *et al.*

ORDER

The Court having considered the motion for reconsideration in the above-captioned case, it is this 23rd day of August, 1996,

ORDERED, by the Court of Appeals of Maryland, that the motion be, and it is hereby, denied.

/s/ Robert C. Murphy
Chief Judge

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[Excerpts from DSM-III-R]

DIAGNOSTIC AND STATISTICAL MANUAL OF MENTAL DISORDERS

(THIRD EDITION - REVISED)

DSM-III-R

[APA Logo]

Published by the
American Psychiatric Association
Washington, DC
1987

* * * *

300.15 Dissociative Disorder Not Otherwise Specified
Disorders in which the predominant feature is a dissociative symptom (i.e., a disturbance or alteration in the normally integrative functions of identity, memory, or consciousness) that does not meet the criteria for a specific Dissociative Disorder.

Examples:

(1) Ganser's syndrome: the giving of "approximate answers" to questions, commonly associated with other symptoms such as amnesia, disorientation, perceptual disturbances, fugue, and conversion symptoms

(2) cases in which there is more than one personality state capable of assuming executive control of the individual, but not more than one personality state is sufficiently distinct to meet the full criteria for Multiple Personality Disorder, or cases in which a second personality never assumes complete executive control

(3) trance states, i.e., altered states of consciousness with markedly diminished or selectively focused responsiveness to environmental stimuli. In children this may occur following physical abuse or trauma

(4) derealization unaccompanied by depersonalization

(5) dissociated states that may occur in people who have been subjected to periods of prolonged and intense coercive persuasion (e.g., brainwashing, thought reform, or indoctrination while the captive of terrorists or cultists)

(6) cases in which sudden, unexpected travel and organized, purposeful behavior with inability to recall one's past are not accompanied by the assumption of a new identity, partial or complete

* * * *

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[Excerpt from DSM-IV]

DIAGNOSTIC AND STATISTICAL MANUAL OF MENTAL DISORDERS FOURTH EDITION

DSM-IV ™

[APA Logo]

PUBLISHED BY THE
AMERICAN PSYCHIATRIC ASSOCIATION
WASHINGTON, DC

309.81 Posttraumatic Stress Disorder

Diagnostic Features

The essential feature of Posttraumatic Stress Disorder is the development of characteristic symptoms following exposure to an extreme traumatic stressor involving direct personal experience of an event that involves actual or threatened death or serious injury, or other threat to one's physical integrity; or witnessing an event that involves death, injury, or a threat to the physical integrity of another person; or learning about unexpected or violent death, serious harm, or threat of death or injury experienced by a family member or other close associate (Criterion A1). The person's response to the event must involve intense fear, helplessness, or horror (or in children, the response must involve disorganized or agitated behavior) (Criterion A2). The characteristic symptoms resulting from the exposure to the extreme trauma include persistent reexperiencing of the traumatic event (Criterion B), persistent avoidance of stimuli associated with the trauma and numbing of general responsiveness (Criterion C), and persistent symptoms of increased arousal (Criterion D). The full symptom picture must be present for more than 1 month (Criterion E), and the disturbance must cause clinically significant distress or impairment in social, occupational, or other important areas of functioning (Criterion F).

Traumatic events that are experienced directly include, but are not limited to, military combat, violent personal assault (sexual assault, physical attack, robbery, mugging), being kidnapped, being taken hostage, terrorist attack, torture, incarceration as a prisoner of war or in a concentration camp, natural or manmade disasters, severe automobile accidents, or being diagnosed with a life-threatening illness. For children, sexually traumatic events may include developmentally inappropriate sexual experiences without threatened or actual violence or injury.

Witnessed events include, but are not limited to, observing the serious injury or unnatural death of another person due to violent assault, accident, war, or disaster or unexpectedly witnessing a dead body or body parts. Events experienced by others that are learned about include, but are not limited to, violent personal assault, serious accident, or serious injury experienced by a family member or a close friend; learning about the sudden, unexpected death of a family member or a close friend; or learning that one's child has a life-threatening disease. The disorder may be especially severe or long lasting when the stressor is of human design (e.g., torture, rape). The likelihood of developing this disorder may increase as the intensity of and physical proximity to the stressor increase.

The traumatic event can be reexperienced in various ways. Commonly the person has recurrent and intrusive recollections of the event (Criterion B1) or recurrent distressing dreams during which the event is replayed (Criterion B2). In rare instances, the person experiences dissociative states that last from a few seconds to several hours, or even days, during which components of the event are relived and the person behaves as though experiencing the event at that moment (Criterion B3). Intense psychological distress (Criterion B4) or physiological reactivity (Criterion B5) often occurs when the person is exposed to triggering events that resemble or symbolize an aspect of the traumatic event (e.g., anniversaries of the traumatic event; cold, snowy weather or uniformed guards for survivors of death camps in cold climates; hot, humid weather for combat veterans of the South Pacific; entering any elevator for a woman who was raped in an elevator).

Stimuli associated with the trauma are persistently avoided. The person commonly makes deliberate efforts to avoid thoughts, feelings, or conversations about the traumatic event (Criterion C1) and to avoid activities, situaitons, or people who arouse recollections of it (Cri-

terion C2). This avoidance of reminders may include amnesia for an important aspect of the traumatic event (Criterion C3). Diminished responsiveness to the external world, referred to as "psychic numbing" or "emotional anesthesia," usually begins soon after the traumatic event. The individual may complain of having markedly diminished interest or participation in previously enjoyed activities (Criterion C4), of feeling detached or estranged from other people (Criterion C5), or of having markedly reduced ability to feel emotions (especially those associated with intimacy, tenderness, and sexuality) (Criterion C6). The individual may have a sense of a foreshortened future (e.g., not expecting to have a career, marriage, children, or a normal life span) (Criterion C7).

The individual has persistent symptoms of anxiety or increased arousal that were not present before the trauma. These symptoms may include difficulty falling or staying asleep that may be due to recurrent nightmares during which the traumatic event is relived (Criterion D1), hypervigilance (Criterion D4), and exaggerated startle response (Criterion D5). Some individuals report irritability or outbursts of anger (Criterion D2) or difficulty concentrating or completing tasks (Criterion D3).

Specifiers

The following specifiers may be used to specify onset and duration of the symptoms of Posttraumatic Stress Disorder:

Acute. This specifier should be used when the duration of symptoms is less than 3 months.

Chronic. This specifier should be used when the symptoms last 3 months or longer.

With Delayed Onset. This specifier indicates that at least 6 months have passed between the traumatic event and the onset of the symptoms.

Associated Features and Disorders

Associated descriptive features and mental disorders. Individuals with Posttraumatic Stress Disorder may describe painful guilt feelings about surviving when others did not survive or about the things they had to do to survive. Phobic avoidance of situations or activities that resemble or symbolize the original trauma may interfere with interpersonal relationships and lead to marital conflict, divorce, or loss of job. The following associated constellation of symptoms may occur and are more commonly seen in association with an interpersonal stressor (e.g., childhood sexual or physical abuse, domestic battering, being taken hostage, incarceration as a prisoner of war or in a concentration camp, torture); impaired affect modulation; self-destructive and impulsive behavior; dissociative symptoms; somatic complaints; feelings of ineffectiveness, shame, despair, or hopelessness; feeling permanently damaged; a loss of previously sustained beliefs; hostility; social withdrawal; feeling constantly threatened; impaired relationships with others; or a change from the individual's previous personality characteristics.

There may be increased risk of Panic Disorder, Agoraphobia, Obsessive-Compulsive Disorder, Social Phobia, Specific Phobia, Major Depressive Disorder, Somatization Disorder, and Substance-Related Disorders. It is not known to what extent these disorders precede or follow the onset of Posttraumatic Stress Disorder.

Associated laboratory findings. Increased arousal may be measured through studies of autonomic functioning (e.g., heart rate, electromyography, sweat gland activity.

Associated physical examination findings and general medical condition. General medical conditions may occur as a consequence of the trauma (e.g., head injury, burns).

Specific Culture and Age Features

Individuals who have recently emigrated from areas of considerable social unrest and civil conflict may have

elevated rates of Posttraumatic Stress Disorder. Such individual may be especially reluctant to divulge experiences of torture and trauma due to their vulnerable political immigrant status. Specific assessments of traumatic experiences and concomitant symptoms are needed for such individuals.

In younger children, distressing dreams of the event may, within several weeks change into generalized nightmares of monsters, of rescuing others, or of threats to self or others. Young children usually do not have the sense that they are reliving the past, rather, the reliving of the trauma may occur through repetitive play (e.g., a child who was involved in a serious automobile accident repeatedly reenacts car crashes with toy cars). Because it may be difficult for children to report diminished interest in significant activities and constriction of affect, these symptoms should be carefully evaluated with reports from parents, teachers, and other observers. In children, the sense of a foreshortened future may be evidenced by the belief that life will be too short to include becoming an adult. There may also be "omen formation"—that is, belief in an ability to foresee future untoward events. Children may also exhibit various physical symptoms, such as stomachaches and headaches.

Prevalence

Community-based studies reveal a lifetime prevalence for Posttraumatic Stress Disorder ranging from 1% to 14%, with the variability related to methods of ascertainment and the population sampled. Studies of at-risk individuals (e.g., combat veterans, victims of volcanic eruptions or criminal violence) have yielded prevalence rates ranging from 3% to 58%.

Course

Posttraumatic Stress Disorder can occur at any age, including childhood. Symptoms usually begin within the first 3 months after the trauma, although there may be a

delay of months, or even years, before symptoms appear. Frequently, the disturbance initially meets criteria for Acute Stress Disorder (see p. 429) in the immediate aftermath of the trauma. The symptoms of the disorder and the relative predominance of reexperiencing, avoidance, and hyperarousal symptoms may vary over time. Duration of the symptoms varies, with complete recovery occurring within 3 months in approximately half of cases, with many others having persisting symptoms for longer than 12 months after the trauma.

The severity, duration, and proximity of an individual's exposure to the traumatic event are the most important factors affecting the likelihood of developing this disorder. There is some evidence that social supports, family history, childhood experiences, personality variables, and preexisting mental disorders may influence the development of Posttraumatic Stress Disorder. This disorder can develop in individuals without any predisposing conditions, particularly if the stressor is especially extreme.

Differential Diagnosis

In Posttraumatic Stress Disorder, the stressor must be of an extreme (i.e., life-threatening) nature. In contrast, in Adjustment Disorder, the stressor can be of any severity. The diagnosis of Adjustment Disorder is appropriate both for situations in which the response to an extreme stressor does not meet the criteria for Posttraumatic Stress Disorder (or another specific mental disorder) and for situations in which the symptom pattern of Posttraumatic Stress Disorder occurs in response to a stressor that is not extreme (e.g., spouse leaving, being fired).

Not all psychopathology that occurs in individuals exposed to an extreme stressor should necessarily be attributed to Posttraumatic Stress Disorder. Symptoms of avoidance, numbing, and increased arousal that are present before exposure to the stressor do not meet criteria for the diagnosis of Posttraumatic Stress Disorder and require

consideration of other diagnoses (e.g., a Mood Disorder or another Anxiety Disorder). Moreover, if the symptom response pattern to the extreme stressor meets criteria for another mental disorder (e.g., Brief Psychotic Disorder, Conversion Disorder, Major Depressive Disorder), these diagnoses should be given instead of, or in addition to, Posttraumatic Stress Disorder.

Acute Stress Disorder is distinguished from Posttraumatic Stress Disorder because the symptom pattern in Acute Stress Disorder must occur within 4 weeks of the traumatic event and resolve within that 4-week period. If the symptoms persist for more than 1 month and meet criteria for Posttraumatic Stress Disorder, the diagnosis is changed from Acute Stress Disorder to Posttraumatic Stress Disorder.

In Obsessive-Compulsive Disorder, there are recurrent intrusive thoughts, but these are experienced as inappropriate and are not related to an experienced traumatic event. Flashbacks in Posttraumatic Stress Disorder must be distinguished from illusions, hallucinations, and other perceptual disturbances that may occur in Schizophrenia, other Psychotic Disorders, Mood Disorder With Psychotic Features, a delirium, Substance-Induced Disorders, and Psychotic Disorders Due to a General Medical Condition.

Malingering should be ruled out in those situations in which financial remuneration, benefit eligibility, and forensic determinations play a role.

■ Diagnostic criteria for 309.81 Posttraumatic Stress Disorder

A. The person has been exposed to a traumatic event in which both of the following were present:

(1) the person experienced, witnessed, or was confronted with an event or events that involved actual or threatened death or serious injury, or a threat to the physical integrity of self or others

☐ Diagnostic criteria for 309.81 Posttraumatic Stress Disorder *(continued)*

(2) the person's response involved intense fear, helplessness, or horror. Note: In children, this may be expressed instead by disorganized or agitated behavior

B. The traumatic event is persistently reexperienced in one (or more) of the following ways:

(1) recurrent and intrusive distressing recollections of the event, including images, thoughts, or perceptions. Note: In young children, repetitive play may occur in which themes or aspects of the trauma are expressed.

(2) recurrent distressing dreams of the event. Note: In children, there may be frightening dreams without recognizable content.

(3) acting or feeling as if the traumatic event were recurring (includes a sense of reliving the experience, illusions, hallucinations, and dissociative flashback episodes, including those that occur on awakening or when intoxicated). Note: In young children, trauma-specific reenactment may occur.

(4) intense psychological distress at exposure to internal or external cues that symbolize or resemble an aspect of the traumatic event

(5) physiological reactivity on exposure to internal or external cues that symbolize or resemble an aspect of the traumatic event

C. Persistent avoidance of stimuli associated with the trauma and numbing of general responsiveness (not present before the trauma), as indicated by three (or more) of the following:

(1) efforts to avoid thoughts, feelings, or conversations associated with the trauma

(2) efforts to avoid activities, places, or people that arouse recollections of the trauma

(3) inability to recall an important aspect of the trauma

(4) markedly diminished interest or participation in significant activities

(5) feeling of detachment or estrangement from others

(6) restricted range of affect (e.g., unable to have loving feelings)

(7) sense of a foreshortened future (e.g., does not expect to have a career, marriage, children, or a normal life span)

D. Persistent symptoms of increased arousal (not present before the trauma), as indicated by two (or more) of the following:

(1) difficulty falling or staying asleep

(2) irritability or outbursts of anger

(3) difficulty concentrating

(4) hypervigilance

(5) exaggerated startle response

E. Duration of the disturbance (symptoms in Criteria B, C, and D) is more than 1 month.

F. The disturbance causes clinically significant distress or impairment in social, occupational, or other important areas of functioning.

Specify if:

Acute: if duration of symptoms is less than 3 months
Chronic: if duration of symptoms is 3 months or more

Specify if:

With Delayed Onset: if onset of symptoms is at least 6 months after the stressor

Supreme Court, U.S.
F I L E D
DEC 20 1996
CLERK

No. 96-794

IN THE SUPREME COURT OF THE UNITED STATES OCTOBER TERM, 1996

JANE ROE,

Petitioner,

v.

A. JOSEPH MASKELL, et. al.

Respondents.

On Petition For Writ Of Certiorari To The Court Of Appeals Of Maryland

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RESPONDENTS' BRIEF IN OPPOSITION

STATEMENT OF THE CASE

Jane Roe brought suit in the Circuit Court for Baltimore City against the Archdiocese of Baltimore, Archbishop William Keeler, Seton Keough High School, School Sisters of Notre Dame, A. Joseph Maskell and Christian Richter, M.D., alleging that the various defendants sexually, physically and/or psychologically abused her - or were responsible for sexual, physical and/or psychological abuse committed upon her - during her years in high school, which ended with her graduation in 1972.[1] Father A. Joseph Maskell was the chaplin at Seton Keough High School, and Ms. Roe was allegedly referred to him for counseling during her high school years. During those periods of counseling she alleged that she was subjected to repeated sexual, physical, and psychological abuse.

After engaging in a period of discovery, the Respondents here moved for summary judgment in the Circuit Court for Baltimore City, based upon the Maryland statute of limitations, which provided that a civil action at law "shall" be filed within three years from the date it accrues. The alleged acts of abuse ended in 1972, and the lawsuit was not initiated by Ms. Roe until 1994. In opposition to the motion for summary judgment she argued that the "discovery rule", which provides an exception to the three year period in the Maryland statute of limitations should

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[1] As the matter was addressed on summary judgment in the state courts, the record was viewed in the light most favorable to Ms. Roe.

have applied to toll her filing requirement, as based upon the concept of "repressed memory" she did not begin to recall the abuse to which she was subjected until 1992. She argued that as she had commenced her action within three years of her recall of the events in question, that the statute of limitations should have been tolled, allowing her suit to proceed. Alternatively, she argued that the provision of the Maryland Code which allows for extensions of time within which to bring actions for persons under a disability should have applied because her mental state rendered her, in effect, disabled within the meaning of that code provision, likewise extending the statute of limitations.

Although Ms. Roe professed that she was unable to recall certain sexual, physical and psychological abuse, she was clearly able to recall from the period 1968 through 1992 various incidents, as described in the petition, which were allegedly undertaken against her will by Father Maskell. She indicated, however, she was unable to recall other "more serious acts of abuse."

Nevertheless, the Maryland Court of Appeals found that the statute of limitations, contained in §5-201 of the Courts and Judicial Proceedings Article of the Maryland Code, barred her cause of action. That three year statute of limitations, the court found, was applicable, and was not extended by the "discovery rule." In Maryland, the "discovery rule" operates as a judicially created tolling provision with regard to §5-101. As discussed by the Court of Appeals in its opinion, contained as an appendix to the petition at pages 4a through 7a, the discovery rule historically

was applied first in medical malpractice actions, and was then extended to encompass other forms of professional malpractice, until being ultimately extended to all civil actions in 1981. The "discovery rule" operates to hold that a cause of action "accrues" pursuant to §5-101 when a plaintiff knows or should have known that actual harm had been done to him or her. After reviewing all of the evidence presented, the Maryland court found that the discovery rule should not operate where a plaintiff claims repressed memory, finding that the concept of repression is indistinguishable from forgetting, which would not activate the discovery rule.

Similarly, the Court of Appeals considered the alternative theory of disability under §5-201 of the Courts and Judicial Proceedings Article of the Maryland Code, and found that the statute had been interpreted only to apply in instances where persons were insane. Citing to numerous Maryland cases, the Court of Appeals found that the evidence of record indicated that Ms. Roe was competent during the period of time in which the abuse allegedly occurred and continued to be competent until she filed her action in 1994. The Maryland court found that there was no "contrary evidence in the record" indicting that Ms. Roe was unable to manage her affairs or could be in any way held to be insane.

The Petitioner here seeks review, pursuant to 28 U.S.C. §1257(a) alleging that this Court should review a federal constitutional question with regard to the application of the discovery rule to the Maryland statute of limitations, under circumstances where repressed memory is alleged. However,

Petitioner admits at page four of her petition that she "...did not reference the Fourteenth Amendment by name..." before the Maryland Court of Appeals, or for that matter before any Maryland court. She avers however that her argument was "...couched in terms of due process..." indicating that various comments she made with regard to being allowed to have her day in court should be construed by this Court as having raised a federal constitutional question before the Maryland courts. The record indicates, however, that no federal question was raised, and in fact no federal question was discussed by either the circuit court judge for Baltimore City, nor by the judges of the Maryland Court of Appeals.

SUMMARY OF ARGUMENT

The petition should be denied because the Petitioner presented no federal question to the Maryland courts, either at the trial or appellate level. No Maryland court considered a federal question, nor ruled upon a federal question.

As well, the petition should be denied because there is no conflict among the circuits with regard to the question which the Petitioner seeks to raise before this Court. The Petitioner has not demonstrated any conflict between the various federal circuits concerning the application of the Fourteenth Amendment of the United States Constitution to repressed memory/statute of limitations cases arising under state court practice. She has demonstrated at most that there are decisions by federal courts which vary, due to the fact that the state laws upon which

they are based vary. She has demonstrated no "conflict" among the circuits.

Finally, the petition should be denied because the petitioner has demonstrated no violation of the due process clause of the Fourteenth Amendment of the United States Constitution with regard to the ruling of the Maryland Court of Appeals. All that she has demonstrated is that the Maryland Court of Appeals applied its three year statute of limitation to the facts and circumstances of her case and ruled that her action was time barred. She has not demonstrated any violation of due process in the ruling of the Maryland court.

REASONS FOR DENYING THE WRIT

THE PETITION FOR A WRIT OF CERTIORARI OF JANE ROE SHOULD NOT BE GRANTED BECAUSE (1) IT SEEKS TO RAISE A "FEDERAL QUESTION" THAT SHE DID NOT RAISE BEFORE THE MARYLAND COURT OF APPEALS; (2) IT DOES NOT DEMONSTRATE A CONFLICT OF LAW AMONG THE FEDERAL CIRCUITS; AND (3) IT FAILS TO SHOW ANY VIOLATION OF THE FOURTEENTH AMENDMENT, AS THE QUESTION INVOLVES, AT MOST, AN INDIVIDUAL QUESTION OF STATE LAW, OVER WHICH THIS COURT DOES NOT HAVE JURISDICTION.

A. Introduction

Jane Roe seeks review on certiorari of the decision of the Maryland Court of Appeals, which ruled that repressed memory did not meet the State of Maryland's requirements with regard to the application of its discovery rule, to extend its statute of limitations. This was purely a matter of interpretation of state law which was addressed as such by the parties before the trial court and before the Court of Appeals of Maryland, the state's highest appellate court. At no time during the process did Ms. Roe raise a federal question with regard to the application of the Fourteenth Amendment of the Constitution of the United States to her claim, nor did she seek a ruling by any Maryland court on that issue. By failing to raise a federal question before the state courts so that they might have an opportunity to rule thereon, she has failed to preserve that issue for review here.

Further, even if she had preserved the issue for review by this Court, Ms. Roe seeks to challenge a state statute of limitations based on an alleged violation of federal due process under the Fourteenth Amendment. That said, she has set forth nothing in her petition to show that there was a violation of the due process clause of the Fourteenth Amendment by the decision of the Maryland Court of Appeals, in its holding that the doctrine of repressed memory did not provide a basis for the application of the discovery rule in tolling the state statute of limitations.

As well, although Ms. Roe in her petition argues that there is a split among the federal circuits

with regard to the application of the treatment of repressed memory as an exception to various state statutes of limitation, there is clearly no split in the circuits necessary to support review by this Court. There is no conflict of federal law as between those United States district courts and circuit courts which have addressed the issue. Instead, each federal court has applied the state law to the substantive issues before it in making its ruling. There is no "conflict" of the interpretation of federal law, but there is, instead, merely a difference in the decisions rendered by the various federal courts, given the application of different state law in each case.

B. **Petitioner Jane Roe Failed To Raise Before The State Courts Any Challenge Based Upon The Application Of The Due Process Clause Of The Fourteenth Amendment, And As Such, This Court Should Not Review The Issue On Certiorari.**

Jane Roe petitions this Court for review pursuant to 28 U.S.C. §1257(a) which indicates that this Court may review on certiorari a final judgment rendered by the highest court of a state where the validity of a state statute is drawn into question on the grounds that it is repugnant to the Federal Constitution. It is clear from a review of her petition that Ms. Roe did not raise this issue before either the state trial court or the Maryland Court of Appeals. In fact she admits at page four of her petition for certiorari that she "... did not reference the Fourteenth Amendment by name...". She nevertheless maintains that her argument was

"...couched in terms of due process..." in an attempt to persuade this Court that what was clearly a question of the application of state law, to the individual facts of her case, can nevertheless be brought before this Court as a "federal question" concerning the application of the United States Constitution to her claims. A review of the decision of the trial court, and of the Court of Appeals decision, demonstrates clearly that neither of those courts addressed any federal question or the application of federal constitutional law, as it was in fact not raised. The United States Constitution is never mentioned in the briefs which were filed before the Court of Appeals in Maryland, and in fact, no federal question was raised.

This Court has held generally that to be reviewable on certiorari, pursuant to the above referenced statute, a federal question must be raised in and decided by the state court. In Illinois v. Gates, 462 U.S. 213 (1982) this Court explained the traditional approach to a review on certiorari of a federal question arising from a state court proceeding. This Court indicated as follows:

> But it is also the settled practice of this Court, in the exercise of its appellate jurisdiction, that it is only in exceptional cases, and then only in cases coming from the federal courts, that it considers questions urged by a petitioner or appellant not pressed or passed upon in the courts below... In cases coming here from state courts in which a state statute is assailed as unconstitutional, there are reasons of peculiar force which should lead us to refrain from deciding questions not presented or decided in

> the highest court of the state whose judicial action we are called upon to review.

Id. at 462 U.S. 218 (citing McGoldrick v. Compagnie Generale Trans Atlantique, 309 U.S. 430, 434-435 (1940)).

Historically, this Court referred to whether a matter had been "pressed or passed" in a state court as a matter of jurisdiction, indicting that unless a federal question had been raised and decided in a state court, the Supreme Court of the United States had no jurisdiction to review the matter on certiorari. See, Crowl v. Randell, 10 Pet. 368, 392, 9 L. Ed. 458 (1836). This Court in Illinois v. Gates, however, noted that in more recent decisions the Court had treated the matter as an exercise of the Court's discretion as opposed to the historical view that the rule was a matter of jurisdiction. While the jurisdictional character of the matter has been changed, it is clear that this Court still disfavors the review on certiorari of matters which have not been pressed or passed upon by the state courts.

In Illinois v. Gates, this Court indicated that there are a number of reasons why review is disfavored. Initially, questions that have not been raised before the state court generally result in a record which is inadequate since it was not compiled with those federal questions in mind. 462 U.S. at 221. See, Cardinale v. Louisiana, 394 U.S. 437, 439 (1969). Secondly, this Court has indicated that it does not wish to infringe upon its relationship with the courts of the various states, noting that said relationship "demands" that the state court be given an

opportunity to consider the constitutionality of state matters and to likewise be given the opportunity to fashion remedies in any constitutional situation. 462 U.S. at 221-222. Finally, this Court notes that the presentation of a federal question for review by a state court allows it to make decisions on state law grounds before a federal question is reached. 462 U.S. at 222. The very nature of the reasons articulated by this Court for not exercising its discretion to review matters not passed upon by the lower courts, impact most clearly with regard to decisions of state courts, resulting in this Court's greater reticence to review federal questions that have not been raised in state courts as juxtaposed to federal questions not raised in federal courts.

The Respondents have been unable to identify, subsequent to the decision of this Court in Illinois v. Gates, any case in which this Court has accepted certiorari, from a state court, when a constitutional issue was not initially raised by the petitioner before the state court, nor passed upon by the state court. Petitioner has cited none. It is clear that Ms. Roe did not raise a federal constitutional issue before the Maryland courts, and it is also clear that no ruling was made by the Maryland Court of Appeals with regard to any federal constitutional issue. Instead the matter was raised as an issue of state law interpretation, and was so considered and ruled upon by Maryland's highest court. Under those circumstances, certiorari should be denied.[2]

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[2] This Court recently denied review of a due process claim, brought in the context of the application of repressed memory to a state statute of limitations in Pritzlaff v. Archdiocese of

C. **Even Assuming That The Petition Filed By Jane Roe Raises A Federal Question, Which Was Properly Raised Below And Is Therefore Reviewable By This Court, There Is No Conflict Among The Circuits Warranting Review.**

Jane Roe seeks to have this Court grant certiorari and review her position that the Maryland Court of Appeals, by refusing to accept repressed memory as a reason to toll the statute of limitations in Maryland, presents one side of a split in the federal circuits on the issue of repressed memory, thereby warranting review by this Court. However, there is no split in the federal circuits concerning a federal question, and therefore there is no basis for review by this Court.

Each of the cases cited in the petition at pages ten through fourteen deal with individual state statutes of limitations applicable in each jurisdiction and how those state statutes of limitations and any judicially created "discovery rule" would be applied under the facts and circumstances of each case. Each court sought to interpret state law. For example, in Roe v. Doe, 28 F.3d 404 (4th Cir. 1994), a case cited in the Petition Brief, the court was asked to interpret the law of South Carolina. It did so, finding that the plaintiff, under the facts and circumstances of that case, did not act within a sufficient time to avoid the

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Milwaukee, 533 N.W.2d 780 (Wis. 1995) cert. denied, __ U.S. ___, 116 S. Ct. 920 (1996). Respondents there, as here, argued that the issue had not been "pressed and passed" in the state courts.

operation of the statute of limitations which barred her claim. In that case, and in the various United States Circuit and District Court cases cited in the petition, it is clear that each federal court was applying a particular state statute, and the judicially created "discovery rule" to the facts and circumstances of a particular case.

This is not an example of a split in the circuits warranting review by certiorari. This Court has indicated that a conflict among the circuits involving questions controlled by state law is not a reason for granting writs of certiorari. As this Court noted in Ruhlin v. New York Life Ins. Co., 304 U.S. 202, 206 (1938) such a conflict may be merely corollary to a permissible difference of opinion in the state courts, and is not an example of a conflict which must be resolved between the circuits. While certiorari will often be granted where there is a conflict among the circuits concerning a matter of federal law, such is not the case with regard to federal courts interpreting state law. Moreover, even when there is a conflict among the various circuits concerning a question of federal law, there is no requirement that certiorari be granted. See McElroy v. United States, 455 U.S. 642, 643 (1982); Marks v. United States, 430 U.S. 188, 189 (1977).

The alleged conflict among the circuits here is nothing more than circuit courts deciding questions of state law, under particular state statutes of limitation. That the various circuit courts have reached differing conclusions with regard to the applications of various state statutes under differing factual circumstances provides no basis for a grant of

certiorari here. There is no conflict among the circuits. There is merely a difference between the circuits based on differences in state law and state statute.

D. **Assuming, Arguendo, That The Petitioner Has Suggested In The Petition A Federal Question Which Meets The Requirements For Certiorari Pursuant To Federal Statute, There Is No Violation Of The Due Process Clause Meriting Review By This Court.**

Jane Roe's basic argument seems to be that there has been a violation of due process, as she has been denied access to the courts of Maryland based upon the application of a Maryland statute of limitations. She suggests that she has been denied the right to assert her claim through no fault of her own, due to her repressed memory claim.

Petitioner's request for certiorari does not, however, demonstrate a denial of due process. This Court has consistently found that statutes of limitations serve a legitimate purpose, and that they constitute an important element of the judicial process. See, e.g. Crown, Cork & Seal Co., Inc. v. Parker, 462 U.S. 345 (1983). In Board of Regents of University of New York v. Tomanio, 446 U.S. 478 (1980), this Court indicated that statutes of limitations are more than technicalities and are necessary to a well ordered judicial system.

In Chase Securities Corp. v. Donaldson, 325 U.S. 304 (1945), this Court was asked to construe a

Minnesota statute of limitations provision which appeared to prohibit a suit for fraud. Subsequent to commencement of the suit, the legislature had passed a law indicating that the existing limitation would not apply to cases such as that before the court. Nevertheless, this Court ruled that this did not violate the petitioner's due process rights. Furthermore, the Court, in its opinion by Justice Jackson, stated that statutes of limitation were necessary, and that their justification rested in convenience rather than in logic. Justice Jackson noted that while statutes are by definition arbitrary, their operation would not discriminate between just and unjust claims. Clearly statutes of limitations go to matters of remedy and not to destruction of fundamental rights. Id., 325 U.S. at 313-314.

Respondents have been unable to identify any cases decided by this Court in which a statute of limitations was overturned on due process grounds, under circumstances such as are presented in the petition. While this Court has held that a cause of action is akin to a property right protected by the Fourteenth Amendment due process clause, Logan v. Zimmerman Brush Co., 455 U.S. 422 (1982), the circumstances here are unlike those in Logan. There a statutory period of 120 days existed within which the Illinois Fair Employment Practices Commission was required to hear a claim. The Commission set a hearing date after that period had expired and then dismissed the claim. This Court agreed with the appellant that the right to due process had been violated as a result of an occurrence beyond his control - the setting of the hearing date outside the

time limit required by statute - and indicated that the appellant was entitled to a hearing on the merits.

Here the situation is not the same. The Maryland Court of Appeals did not, as did the Illinois Fair Employment Practices Commission, violate its own statutory period of limitations. The Maryland three year statute of limitations contained in §5-101 of the Courts and Judicial Proceedings Article of the Maryland Annotated Code was not violated by any action of a Maryland court. Further, the refusal of the court to apply the disability provisions of §5-201 of the Maryland Annotated Code, Courts and Judicial Proceedings Article, was likewise not a violation of that provision. Instead, as is demonstrated by the Maryland Court of Appeals in its opinion, its refusal to apply §5-201 was in accordance with Maryland jurisprudence and case precedent interpreting that section, which limited its application to those who were demonstrated to be insane. Neither the Petitioner here, nor the Co-Plaintiff below, demonstrated that they were insane and thereby not able to file their cause of action.

The failure of the Maryland Court of Appeals to apply the discovery rule under the facts and circumstances presented to it in Ms. Roe's case cannot be a due process violation. The Maryland Court of Appeals concluded that repressed memory was akin to forgetting, and did not constitute a basis upon which the discovery rule should apply to extend the three year statute of limitations period contained in §5-101 of the Courts and Judicial Proceedings Article of the Maryland Annotated Code. In interpreting its own statute and in applying its own discovery rule to

that statute, the court did not violate Ms. Roe's due process rights under the Fourteenth Amendment. The statute of limitations and its discovery rule allowed Ms. Roe the right to bring her cause of action, but the Maryland court found that she did not bring it in a timely way. Her fundamental right of access to the courts was not destroyed, but instead the Maryland Court of Appeals merely applied its own statute and judicial precedent to the facts and circumstances of her case, which resulted in a dismissal based upon the application of the statute. This is purely a question of state law and is not a due process violation warranting review by this Court.

CONCLUSION

For these reasons, the Petition for Certiorari should be denied.

December 20, 1996

Respectfully submitted,

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